

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

WHITNEY NATIONAL BANK ||| A 9:43

PLAINTIFF

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

vs.

CASE NO. 2:07-cv-414-MEF

SAFETY GUIDE OF ALABAMA
LLC and THOMAS J. MILLS,

DEFENDANTS.

COMPLAINT

Comes now Whitney National Bank (hereinafter "Whitney Bank") and states the following claim:

1. Plaintiff Whitney Bank is a national bank having its main office in New Orleans, Louisiana. For diversity purposes, it is a citizen of the State of Louisiana. 28 U.S.C. § 1348. Wachovia Bank v. Schmidt, 546 U.S. 303, 126 S.Ct. 941, 163 L.Ed.2d 797 (2006).
2. Defendant Safety Guide of Alabama LLC ("Safety Guide") is a limited liability company formed under the laws of the State of Alabama with its principal place of business located in Montgomery, Alabama and within the Middle District of Alabama, Northern Division. For diversity purposes, it is a citizen of the State of Alabama.

3. Thomas J. Mills ("Tom Mills") is a resident citizen of the State of Alabama residing in Montgomery County within the Middle District of Alabama, Northern Division.
4. The amount in controversy exceeds \$75,000, exclusive of interest and costs.
5. Upon information and belief, Safety Guide is managed by Michael C. Marcato.
6. Upon information and belief Safety Guide is related to a customer of Whitney Bank named Highway Solutions, LLC ("Highway Solutions") and has common management.
7. Upon information and belief, Tom Mills was, on that date, the comptroller or controller of Safety Guide and Highway Solutions.
8. On March 12, 2007, an officer or employee entrusted with the checks of Highway Solutions wrote an \$80,000 check on its Whitney Bank account payable to Safety Guide which was deposited into Safety Guide's account at another bank and subsequently honored by Whitney Bank.
9. Also on March 12, 2007, an officer or employee entrusted with the checks of Safety Guide issued a check on its account with another bank to Highway Solutions in the amount of \$150,000 which was deposited with Whitney Bank on that date.

10. Officers or employees of Highway Solutions and/or Safety Guide immediately began writing checks drawn on its Whitney Bank account and depleted the deposited amount.

11. After Highway Solutions had depleted the deposited funds, the Safety Guide check was dishonored by Safety Guide's bank.

COUNT I: SAFETY GUIDE DISHONORED CHECK

12. Whitney Bank incorporates in this Count all prior paragraphs of the complaint.

13. On March 12, 2007, an officer or employee of Safety Guide entrusted with the checks of that company issued a negotiable instrument (check) payable to Highway Solutions in the amount of \$150,000.

14. Whitney Bank credited the account of Highway Solutions LLC which, in turn, wrote checks from its account with Whitney Bank on the funds deposited.

15. Wachovia Bank dishonored and returned the check for insufficient funds on or before March 29, 2007.

16. Whitney Bank is a person entitled to enforce the instrument pursuant to the Alabama Uniform Commercial Code. ALA. CODE § 7-3-301.

WHEREFORE, Safety Guide of Alabama, LLC is obligated to pay \$150,000 to Whitney Bank, plus interest and costs of suit.

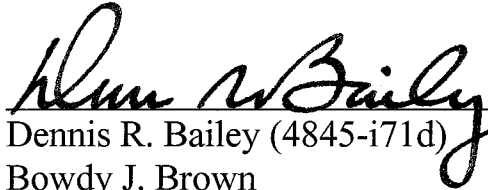
COUNT II: TOM MILLS UNAUTHORIZED SIGNATURE ON CHECK

17. Whitney Bank incorporates in this Count all prior paragraphs of the complaint.
18. On March 12, 2007, an officer or employee of Safety Guide entrusted with the checks of that company issued a negotiable instrument (check) payable to Highway Solutions in the amount of \$150,000.
19. Anne S. and Michael C. Marcato, the managing principals of Highway Solutions and Safety Guide, deny issuing a check for \$80,000 from Highway Solutions to Safety Guide and a check from Safety Guide to Highway Solutions in the amount of \$150,000.
20. On March 12, 2007, upon information and belief, Tom Mills was serving as the treasurer/comptroller for Highway Solutions and/or Safety Guide and had been given access to the checks of Highway Solutions and Safety Guide by Anne S. and/or Michael C. Marcato.
21. On March 2, 2006, an administrative law judge for the Alabama Department of Revenue issued a final order in Docket No. S. 05-917 finding that between November 1999 through March 2002, Tom Mills, then the treasurer/comptroller for Dubose Construction, LLC, “had embezzled hundreds of thousands of dollars from [Dubose Construction] by making false book entries, forging checks, etc.” Whitney Bank learned of this order on April 13, 2007.

22. If it is determined that Tom Mills executed any checks without authority or forged the signatures of those authorized to issue the \$150,000 check drawn on the Wachovia account of Safety Guide, then, in that event, Tom Mills would also be jointly personally liable for the amount of the check.

23. Tom Mills is jointly and severally liable for the amount of the check with Highway Solutions and Safety Guide.

WHEREFORE, Whitney Bank demands judgment against Tom Mills in the amount of \$150,000, plus interest and costs of suit.



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